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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7783 of 1998

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.B. KADIA

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 7783 of 1998

MR IS SUPEHIA for the Petitioner

MR DIPEN DESAI, AGP for Respondents Nos. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 16/06/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a retired Deputy Mamlatdar, has preferred the present petition under Article 226 of the Constitution of India for recovery of interest on the amount of retiral benefits which came to be paid to the petitioner long after his retirement from service.

Upon reaching the age of superannuation the petitioner retired from service as Deputy Mamlatdar on 31st August, 1995. However, days before his retirement i.e. on 28th August, 1995 the petitioner was issued a show-cause notice. In view of the said show-cause notice and intended disciplinary action the retiral benefits of the petitioner were withheld. After receiving the reply to the show-cause notice, by order dated 5th December, 1996, the respondent withdrew the show-cause notice. Even thereafter the retiral benefits of the petitioner were paid after some delay. The petitioner has, therefore, prayed that the petitioner be paid interest 18% per annum on the amount paid to him by way of gratuity, commuted pension, leave encashment, difference on grant of higher grade scale and group insurance. In the counter affidavit made on behalf of the respondent No.2 it is admitted that the notice issued upon the petitioner to show-cause why he should not be held guilty of misappropriation of a sum of Rs.15,651=46 and why should he not be punished for the said act of misconduct came to be withdrawn on 5th December, 1996. It is also admitted that the respondents are under an obligation to pay interest @ 12% per annum for the delay in payment of amount of gratuity and @ 7% per annum for the delay in payment of amount of group insurance.

As to the commuted value of pension, Rule 315 of the Bombay Civil Service Rules empowers the Government to sanction commutation for lump amount, of one-half of the pension or any lesser amount. Thus, commutation of pension for a lump amount is a discretion conferred upon the State Government and a Government servant cannot claim such commutation as a matter of right. Further, when commutation of pension is permitted under the aforesaid Rule 315, the amount of monthly pension is reduced proportionately. In other words, when the commutation of pension is not permitted the Government servant receives full amount of pension. Hence, the claim for interest on delayed payment of commuted value of pension is not justiciable. The Division Bench of this Court in the matter of State of Gujarat v/s. A.S.Patel [1994(1) GLR 625] has held that, "...When a Statute spells out the rights and liabilities of the parties, a Court cannot and should not, pass any order at variance with the law. When the rules clearly provide

that only provisional pension can be paid and that, commutation of pension is not a right, it will be, in our opinion, a wrong exercise of jurisdiction by passing orders which are clearly in conflict with the provisions of Rule 189-B and Rule 315 of the B.C.S. Rules."

Mr.Desai has submitted that at the time the petitioner retired from service a disciplinary action was pending against him and the respondents were wholly justified in withholding the above mentioned monetary benefits during the pendency of the disciplinary proceedings.

In my opinion, the argument is fallacious. No disciplinary action was initiated against the petitioner till the date of his retirement or even thereafter. What is construed as an initiation of a disciplinary action is a mere show-cause notice. Issuance of such show-cause notice cannot be said to be initiation of disciplinary action. It is well settled that a disciplinary action can be said to have been initiated when a proper charge-sheet is issued to the delinquent. It is not the case of the respondents that any charge-sheet came to be issued against the petitioner in the subject matter of the above mentioned show-cause notice. The statutory provisions do not permit the State Government to withhold the retiral benefits of a Government servant merely on the ground that some inquiry or disciplinary action is contemplated. The action of the State Government in withholding the retiral dues of the petitioner on the ground of pending inquiry is not sustainable.

In above view of the matter the petition is allowed. The respondents are directed to pay to the petitioner interest @ 12% per annum on the amount of gratuity, leave encashment and difference of salary on account of grant of higher grade scale from 1st September, 1995 till the date of actual payment. The petitioner shall be entitled to recover interest on the amount of group insurance @ 7% per annum for the period from 1st September, 1995 till the date of payment. If any amount has been paid by State Government by way of interest as admitted in the counter affidavit, such amount shall be adjusted against the amount payable under this order. The petitioner's claim for interest over the commuted value of pension is rejected.

The amount of interest payable pursuant to this order shall be paid on or before 31st August, 2004. In the event the respondents fail to pay the amount of interest as aforesaid by 31st August, 2004 the petitioner

shall be entitled to interest @ 10% per annum over such amount from the date of this order till the date of payment.

Rule is made absolute to the above extent with costs.

(Ms. R.M.Doshit, J.)

/sakkaf